CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 572

JAMES LOUIS GIROUARD, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 30, 1945.

CERTIORARI GRANTED DECEMBER 10, 1945.

SUPREME COURT OF THE UNITED STATES

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JAMES LOUIS GIROUARD, PETITIONER,

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Judd & Detweiler (Inc.), Printers, Washington, D. C., January 14, 1946.

[fol. 1]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

OCTOBER TERM, 1944

No. 4858

UNITED STATES OF AMERICA, Appellant,

v.

JAMES LOUIS GIROUARD, Appellee

IN UNITED STATES DISTRICT COURT: DISTRICT OF MASSACHUSETTS

No. 658, Naturalization Docket

In re: Petition for Citizenship of JAMES LOUIS GIROUARD

[fol. 2] DECLARATION OF INTENTION—Filed August 8, 1940

Duplicate (To accompany monthly report on Form 2208)
No. 292626.

UNITED STATES OF AMERICA

Declaration of Intention

(Invalid for all purposes seven years after the date hereof)

DISTRICT OF MASSACHUSETTS, ss:

In the United States District Court of Mass. at Boston.

I, James Louis Girouard, now residing at 23 Park St., Stoneham, Middlesex Co., Mass., occupation Engineer, aged 37 years, do declare on oath that my personal description is: Sex male, color white, complexion medium, color of eyes grey, color of hair brown, height 5 feet 6 inches; weight 140 pounds; visible distinctive marks none; race, French; nationality, British. I was born in Moncton, N. B., Canada, on Aug. 24, 1902. I am married. The name of my wife or husband is Mabel, we were married on April 9, 1923, at Moncton, N. B., Canada; she or he was born at Canaan, N. B., Canada, on Feb. 24, 1905, entered the United States at Haverhill, Mass., on July 18, 1923, for permanent residence thereon, and now resides at Stoneham, Mass. I have one children, and the name, date and place of birth,

and place of residence of each of said children are as follows: Louise T., Dec. 25, 1925, Stoneham, Mass. I have not heretofore made a declaration of intention; Number ——, on —— ——, at —— ——, my last foreign residence was Moncton, N. B., Canada. I emigrated to the United States of America from Moncton, N. B., Canada, my lawful entry for permanent residence in the United States was at Vanceboro, Maine, under the name of James Girouard, on July 9, 1923, on the vessel Can. Pac. R. R. (If other than by vessel, state manner of arrival.)

I will, before being admitted to citizenship, renounce [fol. 3] forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which I may be at the time of admission a citizen or subject; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to reside permanently therein; and I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me.

I swear (affirm) that the statements I have made and the intentions I have expressed in this declaration of intention subscribed by me are true to the best of my knowledge and belief; So help me God.

James Louis Girouard.

Subscribed and sworn to before me in the form of oath shown above in the office of the Clerk of said Court, at Boston, Mass., this 8th day of August, anno Domini, 1940. Certification No. 1-309159 from the Commissioner of Immigration and Naturalization showing the lawful entry of the declarant for permanent residence on the date stated above, has been received by me. The photograph affixed to the duplicate and triplicate hereof is a likeness of the declarant. James S. Allen, Clerk of the U. S. District Court, by John F. Davis, Deputy Clerk. (Seal.)

[Photo of James Louis Girouard (Girard).]

No. 419175.

Form 2202-L. A U. S. Department of Labor, Immigration and Naturalization Service.

[fol. 4] IN UNITED STATES DISTRICT COURT

Form N-400 (Old A-2214)

U. S. Department of Justice, Immigration and Naturalization Service

(Edition of 7-15-42)

No. 1-309159.

APPLICATION FOR A CERTIFICATE OF ARRIVAL AND PRELIMINARY FORM FOR PETITION FOR NATURALIZATION—Filed January 26, 1943

264212.

For use in searching records of arrival:
Records examined: Card index ——— Index books ——— Manifests ——— ———.
Record Found: Place ——— ———.
Name ——— ———
Date ——— ———. Manner ——— ———.
Marital status ——— ———.
——— ——— (Signature of person making search.)

(Use Form N-215 in issuing certificate of arrival on this application)

To the Applicant: Do not write above this line. Read carefully and follow the instructions on last page hereof. Take or mail this application and your money order to: Immigration and Naturalization Service, Boston, Mass.

[fol. 5] Date: Dec. 14, 1942.

I, James Louis Girouard (Girard), residing at 23 Park St., Stoneham, Middlesex, Mass., desire to file a petition for naturalization in the United States District Court at Boston, Mass. I submit herewith a statement of facts to be used in filing such petition; three photographs of myself, each of which I have signed, and my declaration of intention (first papers), if one is required.

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence and enclose money order No. ——— for $2.50, payable to the order of the "Commissioner of Immi

gration and Naturalization, Washington, D. C.," in payment therefor. (See reference to "Money Order," page 4.)

(1) I arrived in the United States through the port of Vanceboro, Maine, under the name of James Louis Girouard, on July 9, 1923, on the vessel Can. Pac. R. R. (If arrival was through (Canada, Mexico) I arrived at the port of —— —— (Canada, Mexico), on —— ——, on the vessel —— ——).

(2) I have — been absent from the United States as follows: (1929 3 wks.); (1931 2 wks.); (1936 2 wks.); via auto; 1929, Houlton, Maine. 1931, Houlton, Me. 1936, Calais, Maine. I have not been absent at any other time.

(3) I have — used another name in this country than that given above. (If so) It was James Louis Girard. I used that name because members of family who preceded me to U. S. used short spelling of name.

(4) The full name of the person shown on my steamship ticket was James Louis Girouard.

(5) I was born in Moncton, N. B., Canada, on Aug. 24, 1902.

[fol. 6] (6) My father's full name is was Oliver Girouard.

(7) My mother's maiden name was Mary Ellen Dunn.

(8) (If a married woman) My maiden name was —— ——.

(9) My last foreign residence was Moncton, N. B., Canada.

(10) The place where I took the ship or train which landed me in the United States was Moncton, N. B., Canada.

(11) The ticket on which I came to this country was bought at Moncton, N. B., Canada.

(12) (If arrival by ship) Name of steamship line was ——, first, second, or third cabin ——. I arrived as a passenger, stowaway, seaman, member of crew, or otherwise —— ——.

(13) I traveled on (an immigration visa, a passport, or permit to reenter) —— ——.

(14) I paid $8.00 head tax at St. John, N. B., Canada, on July 9, 1923.

(15) I was — examined by United States immigration officers at St. John, N. B., Canada.

(16) (If not examined, state why, and give the circumstances of your entry) —— ——.

(17) The person in the United States to whom I was coming was Mr. Manchester Ryder.

(18) The place in the United States to which I was going was Haverhill, Mass.

(19) The names of some of the passengers or other persons I traveled with and their relationship to me, if any, are Mrs. James Giroiard, Wife.

(20) In what places in the United States have you resided? Haverhill, Mass., from July, 1923, to Feb., 1924. Stoneham, Mass., from Feb., 1924 to present date.

(21) What were the names, occupations, and addresses [fol. 7] of your employers during the last 5 years? New England Sanitarium and Hospital, Woodland Road, Stoneham, Mass., Feb., 1924, to present date.

(22) Do you understand the principles of government of the United States? Yes.

(23) Do you fully believe in the form of government of the United States? Yes.

(24) Are you ready to answer questions as to the principles and form of government of the United States? Yes. What have you done to prepare yourself for an examination on the government of the United States? I am studying Civics and Government.

(25) Have you read the following oath of allegiance? Yes.

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without

any mental reservation or purpose of evasion: So Help Me God.

Are you willing to take this oath in becoming a citizen? Yes. Of what country are you now a citizen or subject? Great Britain.

(26) If necessary, are you willing to take up arms in defense of this country? No (Non-combatant) Seventh Day Adventist. Have you ever during the time this country was at war, deserted the military or naval forces of the United States, or departed from the jurisdiction of the enrollment district or the United States to avoid draft into the military or naval forces of the United States? No.

[fol. 8] (27) If not now married, have you ever been married? —— ——. Are you divorced? ——.

(28) Are you a believer in anarchy or the unlawful damage, injury, or destruction of property, or sabotage? No. Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? No.

(29) Have you ever been an inmate of an insane asylum? No.

(30) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? Yes. If so, give full particulars. Fined $5.00 for alleged exceeding of 25 m.p.h. speed limit in City of Worcester, Mass.

(31) (a) In what place in the United States did you meet for the first time your first witness named on the opposite page? Stoneham, Mass. How often have you seen this witness each month since the date you first met him (her)? Almost daily. At what places? Am associated with him in my work. (b) In what place in the United States did you meet for the first time your second witness named on the opposite page? Stoneham, Mass. How often have you seen this witness each month since the date you first met him (her)? Weekly. At what places? Church.

(32) Have you ever been deported from the United States, or are deportation proceedings now pending against you? No. If so, state all facts. ——.

(33) Was your father or mother ever a citizen of the United States? No. If so, give full particulars ——.

(34) Did you register under the Alien Registration Act of 1940? Yes. If so, state the number of your Alien Registration Receipt Card. 1949835.

(35) Did you yourself fill out this form? Yes. If not, give the name and address of the person who did ——.

[fol. 9] I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief.

James Louis Girouard, 23 Park St., Stoneham, Mass.

[Photograph of James Louis Girouard.]

In United States District Court

Duplicate (To accompany monthly report on Form N-4)

Petition for Naturalization United States of America
Filed November 3, 1943

No. 264212

Petition for Naturalization

[Under General Provisions of the Nationality Act of 1940
(Public, No. 853, 76th Cong.)]

To the Honorable the U. S. District Court of Mass. Dist. at Boston. This petition for naturalization, hereby made and filed respectfully shows:

(1) My full, true, and correct name is James Louis Girouard.

(2) My present place of residence is 23 Park St., Stoneham, Middlesex, Mass.

(3) My occupation is, engineer.

(4) I am 41 years old.

(5) I was born on August 24, 1902, in Moncton, N. B., Canada.

(6) My personal description is as follows: Sex, male; color, white; complexion, medium; color of eyes, brown; color of hair, brown; height 5 feet 6 inches, weight 145 [fol. 10] pounds, visible distinctive marks, scar on neck; race, white; present nationality, British.

(7) I am —— married; the name of my wife or husband is Mabel; we were married on April 9, 1923, at Moncton, N. B., Canada; he or she was born at Cannan, Queens Co., N. B., Canada, on Feb. 21, 1905, and entered the United States at Vanceboro, Maine, on July 9, 1923, for permanent residence in the United States and now resides with me and was naturalized on —— —— at —— ——, certificate No. ——; or became a citizen by ——.

(8) I have one children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows: Louise (f), Dec. 25, 1925, Stoneham, Mass.; with me.

(9) My last place of foreign residence was Moncton, N. B., Canada.

(10) I emigrated to the United States from Moncton, N. B., Canada.

(11) My lawful entry for permanent residence in the United States was at Vanceboro, Maine, under the name of James Gironard, on July 9, 1923, on the C. P. R.R., as shown by the certificate of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows: Departed from the United States: Port, —— ——. Date (Month, day, year) —— ——. Vessel or other means of conveyance —— ——. Returned to the United States: Port —— ——. Date (Month, day, year) —— ——. Vessel or other means of conveyance —— ——.

(13) I declared my intention to become a citizen of the United States on August 8, 1940, in the U. S. D. C. Court of Mass. Dist. at Boston, Mass.

[fol. 11] (14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and

forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States.

(15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(16) I am able to speak the English language (unless physically unable to do so).

(17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(18) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since July 9, 1923, and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, since July 9, 1923.

(19) I have not heretofore made petition for naturalization: No ——, on —— ——, at —— ——, in the —— Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: —— and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my peti-[fol. 12] tion for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention be required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to ———.

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name: So Help Me God.

James Louis Gironard.

Form N-405 (Old 2204 L-B). U. S. Department of Justice, Immigration and Naturalization Service (Edition of 3-1-42).

AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Robert Griffin, my occupation is engineer, I reside at New England Sanitorium, Stoneham, Mass., and My name is Norma Griffin, my occupation is housewife, I reside at New England Sanitorium, Stoneham, Mass.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United [fol. 13] States with said Gironard, the petitioner named in the petition for naturalization of which this affidavit is a part, since May, 1938; to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and at Stoneham, in the State of Mass., continuously since May, 1938, and I have personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

Norma F. Griffin, Robert Griffin.

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of the Clerk of said Court at Boston, Mass., this 3rd day of November, Anno Domini 1943. I hereby certify that Certificate of Arrival No. 1-309159 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, together with Declaration of Intention No. 292626 of such petitioner, has been by me filed with, attached to, and made a part of this petition on this date.

James S. Allen, Clerk, by Arthur D. Grandison, Deputy Clerk. (Seal.)

[fol. 14] The cause was then continued from term to term to the June Term, 1944, when on August 1, 1944, said cause came on for hearing on the aforementioned petition for naturalization, the Honorable George C. Sweeney, District Judge, sitting, and after hearing, the following order admitting petitioner to citizenship was entered:

In United States District Court

Order of Court—August 1, 1944

Date, August 1, 1944.

List No. 888.

This list consists of 2 sheets. Sheet No. 2.

Commonwealth of Massachusetts,
County of Suffolk, ss:

In the District Court of the United States

Upon consideration of the petitions for naturalization listed on List No. 888, sheet(s) 1, dated August 1, 1944, presented in open Court this 1st day of August, A. D., 1944, It Is Hereby Ordered that each of the said petitions be, and hereby is, denied, except those petitions listed below.

Recommendation of Designated Officer Is Disapproved as to the Petitions Listed Below, and each of said petitioners so listed having appeared in person, It Is Hereby Ordered that each of them be, and hereby is, admitted to become a citizen of the United States of America. Prayers

for change of name listed below granted, except in petition(s) No. 266895.

	Petition No.	*Name of Petitioner*	*Change of Name*
1	239507	Stefano Milone.	
2	242819	Maria Teixeira.	
3	264212	James Louis Gi[illegible]ouard.	
4		–	
5		–	
6		–	
7		–	
[fol. 15] 8		–	
9		–	
10		–	
11		–	
12		–	
13		–	
14		–	
15		–	
16		–	
17		–	
18		–	
19		–	
20		–	

It is further ordered that petitions listed below be continued for the reasons stated.

Petition No.	*Name of Petitioner*	*Cause for Continuance*
238336	Giuseppe Cali	Absent
239750	Stanley Dobrisky	Absent
243239	Sergio Anthony Pizzi	Six months' clear record
260517	Barney Barmash	Absent
267417	Adolphe Demanche	Absent

By the Court.

Geo. C. Sweeney, Judge.

[fol. 16] IN UNITED STATES DISTRICT COURT

No. 264212

NOTICE OF EXCEPTION AND ORDER THEREON—Filed August 25, 1944

I, James P. O'Sullivan, United States Naturalization Examiner, hereby give notice of my exception to the ruling of this honorable court in the petition for naturalization above referred to, which ruling was as follows:

> That since the Selective Service and Training Act permits, as a matter of right, an applicant for the draft to express a willingness to serve in the armed forces of the United States, but as a non-combatant, then this petitioner by exercising that right is still a person who can take an unqualified oath of allegiance to the United States and is therefore eligible to citizenship.
>
> (Signed) James P. O'Sullivan.

Date, Aug. 25, 1944.

ORDER

The Court being fully advised in the premises, it is hereby ordered and decreed that the exception shall be noted and the Clerk of Court instructed to file this notice of exception to the court's ruling with the original petition on file in his office.

(Signed) George C. Sweeney, Judge.

[fol. 17] From the foregoing order of court admitting petitioner to citizenship, entered on August 1, 1944, the United States claims an appeal to the United States Circuit Court of Appeals for the First Circuit.

IN UNITED STATES DISTRICT COURT

STATEMENT IN NARRATIVE FORM OF PETITIONER'S TESTIMONY BEFORE THE COURT, IN ACCORDANCE WITH RULE 75(c)—Filed December 28, 1944.

In accordance with Rule 75(c) of the Federal Rules of Procedure, Edmund J. Brandon, United States Attorney

for the District of Massachusetts, for, and on behalf of the United States of America now comes and makes this condensed statement of petitioner's testimony before the Court.

Statement

The appellee, James Louis Gironard, a native and former resident of Canada, entered the United States in 1923, and has since resided in this country. In 1940 he filed a declaration of intention to become a citizen of the United States, and in 1943 a petition for naturalization.

In answer to the question, on the preliminary form of application, as to whether he was willing to take up arms in defense of this country, the said appellee answered: "No. (Seventh Day Adventist, non-combatant)."

On preliminary examination the appellee, then the petitioner, stated to the Examiner that this answer was based on purely religious grounds. In his Selective Service questionnaire he had claimed exemption from both combatant and non-combatant military service as a conscientious objector. On March 9, 1943, he made a sworn statement before George F. Sears, Immigrant Inspector, which is included in the Designation of Contents of Record, and marked "4". This also was presented to the Judge at [fol. 18] the hearing. At the time of the hearing before the Court the Naturalization Examiner recommended that the petition of said appellee, James Louis Gironard, be denied.

This hearing was held before the Court on August 1, 1944, at which time the District Court Judge interrogated the appellee, James Louis Gironard. No transcript of this examination was made, but it appears that the appellee testified that he was a member of the Seventh Day Adventist sect, of whom he said there were apparently 10,000 serving in the armed forces of the United States as non-combatants, especially in the Medical Corps, and that he was willing to serve in the army as such non-combatant, but would not bear arms. The Court ordered him admitted to citizenship.

To this ruling a Notice of Exception was immediately filed with the Court by a representative of the United States Immigration and Naturalization Service, which the

Judge ordered noted and instructed that same be filed. The ruling reads as follows:

"That since the Selective Service and Training Act permits, as a matter of right, an applicant for the draft to express a willingness to serve in the armed forces of the United States, but as a non-combatant, then the petitioner by exercising that right is still a person who can take an unqualified oath of allegiance to the United States, and is therefore eligible to citizenship."

Edmund J. Brandon, United States Attorney; Arthur J. B. Cartier, Assistant United States Attorney.

[fol. 19] In United States District Court

Sworn Statement of James Louis Gironard

1500-D-292626

Boston, Massachusetts, March 9, 1943

In response to our letter of February 23, 1943, under file No. 1500-D-292626, Mr. James Louis Gironard called at this office, and after being duly sworn testified as follows before Immigrant Inspector George F. Sears:

Q. What is your correct name?

A. James Louis Gironard.

Q. Are you the same James Louis Gironard who filed declaration of intention No. 2-2626 in the United States District Court on August 8, 1940, and are now applying for to petition for naturalization?

A. Yes, sir.

Q. It is noted on page 2 under question 26 which asks, "If necessary, are you willing to take up arms in defense of this country" your answer is "No," which has been qualified by the word "Non Combatant," have you any remark to make on this point?

A. Not except that it is a purely religious matter with me. I have no political or personal reasons other than that.

Q. Then you are unwilling to bear arms in defense of this country?

A. That is right.

Q. Have you anything further to say?

A. No, I believe there is nothing else I would add to that.

It was explained to Mr. Girouard that the Supreme Court has ruled that it is necessary that a petitioner be willing to bear arms in defense of this country.

Applicant states he prefers to present his case to the court.

James Louis Girouard.

Signed and sworn to before me at Boston, Massachusetts, this 9th day of March, 1943. George F. Sears, Acting Naturalization Examiner.

[fol. 20] Record of Selective Service Local Board No. 161

U. S. Department of Justice

Immigration and Naturalization Service

1500-B-264212

Draft Board No. 161, Town Hall, Winchester, Mass.

Boston, Mass., 1-3-43.

Sirs:

For the purpose of obtaining information from the Selective Service System concerning your record under the Selective Training and Service Act of 1940, in connection with your application for naturalization, please fill in the blanks within the black-lined box below, and return the entire form to me in the enclosed envelope, which requires no postage.

Respectfully Henry Nicolls, District Director of Immigration and Naturalization.

Only this section to be filled out by petitioner.

My full name is James Louis Girouard; I am registered with Local Board No. 161, for Winchester, Middlesex, Mass. My address which I gave when I registered was 23 Park St., Stoneham, Mass., Middlesex, Mass. My order number is 11051.

James Louis Girouard.

To the Local Selective Service Board Named Above:

Sirs:

For use in connection with naturalization proceedings please complete this form by filling out the reverse hereof from the information appearing on your records concerning the registrant whose name, address, and order number are [fol. 21] given in the space above, and return this form in the enclosed envelope which requires no postage.

Respectfully, Henry Nicolls, District Director of Immigration and Naturalization.

To the District Director of Immigration and Naturalization:

Sir:

I certify that the registrant named on the reverse hereof (whose name, address, and order number as shown on the reverse hereof accord with our records unless otherwise specified below) has filed with this Board a Questionnaire (Form 40); that if the registrant has filed a Questionnaire (Form 40), the date of the affidavit on page 7 thereof is May 7, 1943; that the entries under item 7, series IX, page 6, are as follows: "7. I have filed a declaration of intention to become a citizen of the United States (first papers). Declaration filed at Boston, Mass., on August 8, 1940, under No. 292626;" that in series X, page 6, the registrant did claim exemption from combatant or noncombatant military service as a conscientious objector; that if he did so claim, he has filed with this Board a "Special Form for Conscientious Objector" (Form 47); that any statement relating to his naturalization or to his conscientious objection to war made by said registrant on page 7 under the heading "Registrant's Statement Regarding Classification" was as follows: none, and that the classification of said registrant now is 3A(H).

Geo. W. Hayden, Clerk of Local Board No. 161.

[Official stamp of local board.]

[fol. 22] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS FOR FIRST CIRCUIT

(Under Rule 73B)

Notice is hereby given that on the Petition numbered 264212, being application numbered 6,362,142, of the above-named James Louis Girouard, of 23 Park Street, Stoneham, in said District of Massachusetts, who was admitted to citizenship by the United States District Court at Boston, in said District, on August 1, 1944, now comes Edmund J. Brandon, United States Attorney for said District of Massachusetts, for and in behalf of the United States of America, and hereby appeals to the Circuit Court of Appeals for the First Circuit from said Order.

Edmund J. Brandon, United States Attorney; Arthur J. B. Cartier, Assistant United States Attorney.

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

In accordance with Rule 75(d) of the Federal Rules of Procedure, Edmund J. Brandon, United States Attorney for the District of Massachusetts, in behalf of the United States of America, now comes and says:

Statement of Facts

The Appellee, James Louis Girouard, a native and former resident of Canada, entered the United States in 1923, and has since resided in this country. In 1940 he filed a declaration of intention to become a citizen of the United States, and in 1943 a petition for naturalization.

In answer to the question, on the preliminary form of application, as to whether he was willing to take up arms in defense of this country, the said Appellee answered: "No, (Seventh Day Adventist, non-combatant)."

[fol. 23] On preliminary examination the Appellee, then the Petitioner, stated to the Examiner that this answer was based on purely religious grounds. In his Selective Service

questionnaire he had claimed exemption from both combatant and non-combatant military service as a conscientious objector. At the time of the hearing before the Court the Naturalization Examiner recommended that the petition of said Appellee, James Louis Girouard, be denied.

A hearing was held before the Court on August 1, 1944, at which time the District Court Judge interrogated the Appellee, James Louis Girouard. No transcript of this examination was made, but it appears that the Appellee testified that he was a member of the Seventh Day Adventist sect, of whom he said there are apparently 10,000 serving in the armed forces of the United States as non-combatants, especially in the Medical Corps; and that he was willing to serve in the army as such non-combatant, but would not bear arms. The Court ordered him admitted to citizenship.

To this ruling a "notice of exception" was immediately filed with the Court by a representative of the United States Immigration and Naturalization Service, which the Judge ordered noted and instructed that same be filed. The ruling reads as follows:

> "That since the Selective Service and Training Act permits, as a matter of right, an applicant for the draft to express a willingness to serve in the armed forces of the United States, but as a non-combatant, then this petitioner by exercising that right is still a person who can take an unqualified oath of allegiance to the United States and is therefore eligible to citizenship."

To the said ruling a notice of appeal was duly filed, and the United States of America now designates the said ruling as the point on which it intends to rely on its appeal.

[fol. 24] Applicable Statute

Section 307A, Nationality Act of 1940; five years' residence in the United States; valid declaration of intention; good moral character for the period of his residence; and attachment to the principles of the United States Constitution.

Edmund J. Brandon, United States Attorney; Arthur J. B. Cartier, Assistant United States Attorney.

In United States District Court

Designation of Contents of Record on Appeal

Now comes Edmund J. Brandon, United States Attorney for the District of Massachusetts, for and on behalf of the United States of America, and for the purpose of prosecuting its appeal to the United States Circuit Court of Appeals for the First Circuit, requests the Clerk to prepare and forward to said United States Circuit Court for the First Circuit, a transcript which shall include the following:

1. Petition for Naturalization No. 264212 of James Louis Girouard.

2. Declaration of intention of James Louis Girouard, No. 292626.

3. Preliminary form for petition for naturalization No. 264212 of said James Louis Girouard.

4. Sworn statement of James Louis Girouard dated March 9, 1943, and bearing number 1500-D-292626.

4(a). Order of Court.

5. Record of Selective Service Local Board No. 161, Winchester, Massachusetts, of James Louis Girouard, dated November 3, 1943, and executed by the Clerk, George W. Hayden.

[fol. 25] 6. Notice of exception which the Court instructed the Clerk to file containing the Court's ruling.

7. Statement of Points on which Appellant intends to rely on appeal.

8. Designation of Contents of Record on Appeal.

9. Statement in Narrative Form of Petitioner's Testimony before the Court, in accordance with Rule 75(c).

Edmund J. Brandon, United States Attorney; Arthur J. B. Cartier, Assistant United States Attorney.

Clerk's Certificate to foregoing transcript omitted in printing.

[Memorandum. An order of enlargement of time for docketing case to, and including, January 15, 1945, is here omitted. A. I. Charron, Clerk.]

[fol. 26] PROCEEDINGS IN CIRCUIT COURT OF APPEALS

On April 3, 1945, this case came on to be heard, and was fully heard by the Court, Honorable John C. Mahoney and Honorable Peter Woodbury, Circuit Judges, and Honorable Arthur D. Healey, District Judge, sitting.

Thereafter, to wit, on the first day of June, A. D. 1945, the following opinion of the Court and dissenting opinion were filed:

[fol. 27] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1944

No. 4058

UNITED STATES OF AMERICA, Appellant,

v.

JAMES LOUIS GIROUARD, Appellee

Appeal from the District Court of the United States for the District of Massachusetts

Before Mahoney, Woodbury and Healey, J.J.

Edmund J. Brandon, United States Attorney.

Arthur J. B. Cartier, Assistant U. S. Attorney, for Appellant.

David J. Coddaire, William J. Fitzsimons, for Appellee.

OPINION OF THE COURT—June 1, 1945

MAHONEY, J.:

The question here is whether a conscientious objector who is willing to serve as a noncombatant in the armed forces of the United States but unwilling to bear arms in its defense may be admitted to citizenship.

The appellee was born in Canada in 1902 and came to this country in 1923. In his declaration of intention to become a citizen of the United States, which he filed in the District Court at Boston on August 8, 1940, he described himself as [fol. 28] an engineer with residence at Stoneham, Massachusetts, where he lives with his wife and daughter. He stated on the preliminary form of petition for naturalization that he understood the principles of the government of the

United States, believed in its form of government and was willing to take the oath of allegiance in the following form:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God."

His answer to the question "If necessary, are you willing to take up arms in defense of this country?"—was "No (non combatant) Seventh Day Adventist". He is of good moral character, well disposed to the good order and happiness of the United States and is not affiliated with any organization opposed to organized government. In a sworn statement before the Acting Naturalization Examiner on March 9, 1943, he stated that it was a purely religious matter with him, and in a questionnaire filed with Local Draft Board No. 161 he claimed exemption from combatant or non-combatant military service as a conscientious objector. At a hearing before the District Court all this evidence was submitted together with the testimony of the appellee that he was a member of the Seventh Day Adventist sect. He said that there were about ten thousand of this sect serving in the armed forces of the United States as non-combatants, especially in the medical corps; and that he was willing to serve in the army as a non-combatant but would not bear arms. The court admitted him to citizenship and entered the following order: "That since the Selective Service and [fol. 29] Training Act permits, as a matter of right, an applicant for the draft to express a willingness to serve in the armed forces of the United States, but as a non-combatant, then this petitioner by exercising that right is still a person who can take an unqualified oath of allegiance to the United States, and is therefore eligible to citizenship." We think that the lower court was in error.

Naturalization is a privilege which is offered to any alien who desires to become a citizen, but it is a privilege subject to conditions which have been prescribed by Congress and

with which the petitioner for citizenship must strictly comply. Congress is empowered by the Constitution to provide for the naturalization of aliens and the fact that it has always thought that naturalization is to be granted only after great care and consideration is evidenced by an examination of the strict requirements which it has declared the petitioner must meet. Among the conditions which he must fulfill and the obligations which he must undertake are those contained in the oath of allegiance which he takes before being admitted to citizenship.

The Supreme Court has interpreted that oath to mean that the petitioner is willing to bear arms in defense of this country and unless he takes an oath so interpreted the petition is to be dismissed and the privilege of citizenship denied. In *United States* v. *Schwimmer*, 279 U. S. 644, 651 (1929) the applicant for citizenship was a woman born in Hungary. Her preliminary examination showed that she was an uncompromising pacifist with no sense of nationalism, "only a cosmic consciousness of belonging to the human family". She was a linguist, lecturer and writer, well educated and accustomed to discuss government and civic affairs. She was opposed to undemocratic institutions and wanted to become a citizen of a country whose principles were in harmony with her ideals but was not willing to take up arms in its defense. The Court in reversing the Circuit [fol. 30] Court of Appeals and affirming the District Court, which had denied her petition, said:

"That it is the duty of citizens by force of arms to defend our government against all enemies whenever necessity arises is a fundamental principle of the Constitution.

"Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the Government. And their opinions and beliefs as well as their behavior indicating a disposition to hinder in the performance of that duty are subjects of inquiry under the statutory provisions governing naturalization and are of vital importance, for if all or a large number of citizens oppose such defense the 'good order and happiness' of the United States can not long endure. And it is evident that the views of applicants for naturalization in respect of such matters may not be disregarded. The influence of conscientious objectors against the use of military force in defense of the principles

of our Government is apt to be more detrimental than their mere refusal to bear arms. The fact that, by reason of sex, age or other cause, they may be unfit to serve does not lessen their purpose or power to influence others."

The case of *United States* v. *Macintosh*, 283 U. S. 605, followed in 1931. There the petitioner for naturalization came to this country from Canada. He was a Baptist minister and a member of the faculty of the Divinity School at Yale University. In the first World War he was a chaplain with the Canadian Army and served with the American Y.M.C.A. He stated that he was willing to take the prescribed oath but that he was not willing to take up arms unless he believed that the war was morally justified; that his first allegiance was to the will of God; and that "he could not put allegiance to the government of any country before allegiance to the will of God." Here, too, the Supreme Court reversed the Circuit Court of Appeals and affirmed the District Court's action in dismissing the petition. It held:

[fol. 31] "* * * The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, express or implied; but because, and only because, it has accorded with the policy of Congress thus to relieve him. The alien, when he becomes a naturalized citizen, acquires, with one exception, every right possessed under the Constitution by those citizens who are native born (*Luria* v. *United States*, 231 U. S. 9, 22); but he acquires no more. The privilege of the native-born conscientious objector to avoid bearing arms comes not from the Constitution, but from the acts of Congress. That body may grant or withhold the exemption as in its wisdom it sees fit; and if it be withheld, the native-born conscientious objector cannot successfully assert the privilege. No other conclusion is compatible with the well-nigh limitless extent of the war powers as above illustrated, which include, by necessary implication, the power, in the last extremity, to compel the armed service of any citizen in the land, without regard to his objections or his views in respect of the justice or morality of the particular war or of war in general. * * *

"When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make

his own interpretation of the will of God the decisive test which shall conclude the government and stay its hand. We are a Christian people (*Holy Trinity Church* v. *United States*, 143 U. S. 457, 470-471) according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a Nation with the duty to survive; a Nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the Nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God."

United States v. *Bland*, 283 U. S. 636 (1931) was decided at the same time as the *Macintosh* case. There the applicant for citizenship was a native of Canada who had served this country as a nurse in the first World War. She refused to bear arms in defense of the United States under [fol. 32] any circumstances and was unwilling to take the oath unless the words "as far as my conscience as a Christian will allow" were written into it. Again the Supreme Court reversed the Circuit Court of Appeals and sustained the District Court's dismissal of the application. It rendered its decision in accordance with the opinion in the *Macintosh* case and said that "The words of the statute do not admit of the qualification upon which the applicant insists."

It is true that these decisions were by a divided court but until they are overruled by the court itself or Congress enacts legislation which gives to the oath a meaning contrary to the interpretation placed upon it by the court, we are bound to accept the law as promulgated by these decisions. The facts in the instant case bring it squarely within the principles of these cases.

The District Court, however, took the view that any person subject to the draft who by reason of religious training or belief is conscientiously opposed to war may state his willingness to serve in the armed forces but as a non-combatant under § 305(g) of the Selective Training and Service Act of 1940 (54 Stat. 887, 50 U. S. C. A. War Appendix § 301 *et seq.*) and is entitled to take the oath. But the permission given to a conscientious objector; alien as well as citizen, to express his willingness to serve in the armed forces of the United States as a non-combatant, does not mean that

the applicant for citizenship is not required to take an oath to bear arms in defense of this country. The naturalization laws make certain requirements of the applicant for citizenship and the consideration given to him as a draftee under the Selective Training and Service Act does not lessen those requirements.

When Congress passed the Nationality Act of 1940 (54 Stat. 1137, 8 U. S. C. A. §§ 501 *et seq.*) it reenacted the same oath of allegiance and did not change in any way the interpretation placed upon it by the Supreme Court. However, [fol. 33] by an amendment to that Act in 1942 (56 Stat. 182, 183; 8 U. S. C. A. §§ 1001, 1004) it excused "any person not a citizen, regardless of age, who has served or who hereafter serves honorably in the military or naval forces of the United States during the present war" and who has been lawfully admitted to the United States, from filing a declaration of intention, and from the residence and educational requirements. No change was made in the oath of allegiance. It was also stated that the provisions of the amendment shall not apply "to any conscientious objector who performed no military duty whatever or refused to wear the uniform".

In *In re Kinloch*, 53 F. Supp. 521, two British subjects applied for citizenship. They were classified as conscientious objectors for non-combatant service. At the time of their applications they were members of a medical unit of the army. The court granted their applications and admitted them to citizenship. It reasoned that by Congressional enactment it was provided that these and similarly situated applicants were entitled to citizenship by virtue of becoming members of the armed forces of the United States. It stated that to require them to take an oath which means that they are willing to bear arms would destroy the purpose of the amendment and make it meaningless.

Since the appellee has not served in the armed forces he is definitely denied the benefits of this amendment. But it is urged that the amendment has inferentially changed the meaning of the oath of allegiance as promulgated in the *Schwimmer*, *Macintosh* and *Bland* cases and any conscientious objector may become a citizen by taking an oath which does not mean that he is willing to bear arms.

Congress, we think, in passing this amendment, intended to reward the conscientious objectors who had served or were serving in the armed forces by allowing them to take

an oath which did not conflict with their religious scruples. [fol. 34] It has passed no legislation expressly changing the meaning as interpreted by the Supreme Court, and we do not believe that it intended to extend this reward beyond this particular group. We do not think that it meant to give the benefit of such an inferential change in the meaning of the oath of allegiance to any alien conscientious objector who like the appellee here has not served and is not serving in the armed forces, or to conscientious objectors opposed to participate in non-combatant service who have been assigned to work of national importance under civilian direction. Since the petitioner is not willing to bear arms in defense of the United States, his petition must be denied.

The order of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

WOODBURY, J. (dissenting):

I think the order of the District Court should be affirmed.

The inclusion in the preliminary application for naturalization of the question with respect to willingness to take up arms in defense of this country rested originally upon administrative, not legislative, action. Congress in §§ 4, 7, and 8 of the Naturalization Act of 1906 (34 Stat. 596) in specifying the requirements for admission to citizenship by naturalization did not see fit to include one calling for a statement of willingness to take human life in defense of the United States. Nevertheless a majority of the Supreme Court in the *Schwimmer*, *Macintosh*, and *Bland* cases found such a requirement in the provision of § 4 *Third* of the Act of 1906, now § 335 (a) (3), (4) of the Nationality Act of 1940, (54 Stat. 1157; 8 U. S. C. § 735 (a) (3), (4)) which provides that an alien applicant for citizenship must before admission declare on oath in open court that he will "support and defend the Constitution and laws of the United [fol. 35] States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." The majority took the view that a pacifist could not take an oath couched in the terms quoted without mental reservation.

Following these decisions Congress passed the Nationality Act of 1940 (54 Stat. 1137) "To revise and codify the nationality laws of the United States into a comprehensive nationality code." By it Congress did not alter the terms

of the oath of allegiance and so by inference it might be said to have adopted the interpretation placed upon the oath by the Supreme Court in the cases just referred to. But this inference seems to me to lose persuasive force by reason of the fact that Congress in its revision and codification did not include, when adding many new requirements for eligibility to citizenship by naturalization, a specific one of willingness to bear arms, but instead permitted that requirement still to stand on an interpretation of the oath of allegiance by a closely divided court. It seems to me in consequence that no persuasive inference of Congressional adoption of the judicial interpretation of the oath of allegiance in the *Schwimmer*, *Macintosh* and *Bland* cases can safely be drawn from the Nationality Act of 1940. It seems to me that the permissible inferences from that statute neutralize one another.

Then I find in the amendment of the above act passed on March 27, 1942, (56 Stat. 182, 183) positive evidence that Congress has changed the interpretation put upon the oath of allegiance by the Supreme Court in the *Schwimmer*, *Macintosh* and *Bland* cases to the extent of making it possible for persons who share the petitioner's religious scruples to take it without mental reservation. By the amendment a new title was added to the 1940 Act, the effect of which is to simplify and expedite naturalization for "any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces [fol. 36] of the United States during the present war," (and who has been lawfully admitted) by excusing such persons from filing a declaration of intention to become a citizen and relieving them of the residence and educational requirements. It is true that the petitioner cannot take advantage of the special provisions of this amendment because he has not served in the military or naval forces. He is not trying to. But it applies to any person with service therein and therefore it applies to those with service in a non-combatant, as well as to those with service in a combatant capacity. *In re Kinloch*, 53 F. Supp. 521. Certainly it cannot be said that one in the medical corps of the army or the hospital corps of the navy is not serving respectively "in the military or naval forces of the United States." Thus the amendment applies to those who share the petitioner's scruples, if they have been called upon and have served in a capacity permitted by their scruples.

and, since the amendment does not change the oath of allegiance, it would seem to follow that Congress has by necessary implication expressed its intention that one who believes as the petitioner does can take that oath without reservation. It would be strangely inconsistent if Congress permitted conscientious objectors to elect service in a non combatant capacity, gave persons so serving, if aliens, advantages in obtaining citizenship by naturalization, and then required them to take an oath actually to bear arms in defense of the United States.

The interpretation placed upon this amendment by my associates seems to me to accord to Congress an intention to have the words of the oath mean one thing to a person who is willing to serve and has served in the military forces to the extent permitted by his scruples, and something else to one equally willing to serve but who for reasons of age, sex, dependency or physical unfitness has not been called upon or permitted to do so. I think Congress must have intended the words of the oath to mean the same thing to [fol. 37] one who has served in the military or naval forces as they do to one who has not.

I would even be willing myself to go further and affirm the order of the court below on a still broader ground. I would be willing to recognize frankly that the case at bar is ruled in principal by the *Schwimmer*, *Macintosh* and *Bland* cases, but decline to follow them.

In taking this course I recognize my duty as an inferior federal judge to accept and follow controlling decisions of the Supreme Court of the United States whether I personally agree with those decisions or whether I do not. I fully appreciate that federal law would soon become chaotic if judges such as I should do otherwise. But I do not believe that as a consequence of this we on this court are under a positive duty always to follow blindly.

Like all appellate courts I conceive it to be our judicial duty to decide cases as we think they should be decided, but as an intermediate appellate court one of the factors and a highly important one, for us to take into consideration in concluding how we should decide a case is the view which we think the Supreme Court would take on the question at issue before us. Nothing is to be gained by our deciding a question contrary to the way we think the Supreme Court would decide it. And to determine how the Supreme Court would decide a question we ordinarily would follow and

apply unreversed decisions of that court in point. But as Judge Parker said in *Barnette* v. *West Virginia State Board of Education*, 47 F. Supp. 251, 253, "decisions are but evidences of the law and not the law itself," and although I frankly concede that in the vast majority of cases decisions of the Supreme Court constitute so far as we are concerned conclusive "evidences of the law," nevertheless on rare occasions, and I think this is one of them, situations arise when in the exercise to the best of our ability of the duty to prophesy thrust upon us by our position in the federal judi-
[fol. 38] cial system we must conclude that dissenting opinions of the past express the law of today. When this situation arises and we do not agree with decisions of the Supreme Court I think it our duty to decline to follow such decisions and instead to follow reasoning with which we agree. As I see it this is the situation which confronts us here.

Fundamentally the question presented is one of statutory construction. It is whether Congress, as a condition of admission to citizenship by naturalization, requires an applicant to state under oath that he is willing actually to take up arms in defense of this country. In other words, is it the Congressional will that aliens otherwise qualified be denied admission to citizenship if conscientiously opposed to taking life in war?

As already appears the Supreme Court has three times answered this question in the affirmative. But in the *Schwimmer* case, Mr. Justice Holmes, speaking for himself and Mr. Justice Brandeis, dissented on the ground that the applicant, being a woman over fifty years of age, "would not be allowed to bear arms if she wanted to," and for the further reason that he could not see that a belief in pacifism made it impossible to subscribe wholeheartedly to the oath required. Mr. Justice Sanford, who also dissented, agreed in substance with the views of the Circuit Court of Appeals (27 F. (2d) 742) which can be summarized by the quotation "A petitioner's rights are not to be determined by putting conundrums to her."

In the next case in which the Supreme Court considered the question, *United States* v. *Macintosh*, 283 U. S. 605, Mr. Chief Justice Hughes, and Associate Justices Holmes, Brandeis, and Stone dissented. Speaking through the then Chief Justice, the dissenters conceded that naturalization is a privilege which Congress could grant or withhold on

such conditions as it might impose; that Congress could constitutionally compel service in the armed forces by whom-[fol. 39] soever it might select regardless of religious scruples, and from this they were willing to assume that Congress had authority to exact a promise to bear arms as a condition to its grant of naturalization. But they did not find evidence in the statute indicating that Congress had exacted such a promise. They noted the omission from the statute of any express requirement of a promise to bear arms, said that the question "is whether that exaction is to be implied from certain general words" which they did not think "either literally or, historically, demand the implication," and then said: "If such a promise is to be demanded, contrary to principles which have been respected as fundamental, the Congress should exact it in unequivocal terms, and we should not, by judicial decisions, attempt to perform * * * a legislative function."

In detail the dissenting Justices reasoned thus: On examining the statute they found certain specific requirements with regard to the opinions and conduct of applicants for citizenship but among them found none "to the effect that one shall not be naturalized if by reason of his religious convictions he is opposed to war or is unwilling to promise to bear arms." They considered this omission "highly significant." Next they examined the facts, and from that examination concluded that the petitioner had fully satisfied all the specific statutory requirements, and then they said that "The principal ground for exclusion appears to relate to the terms of the oath which the applicant must take." They said: "The question then is whether the terms of the oath are to be taken as necessarily implying an assurance of willingness to bear arms, so that one whose conscientious convictions or belief of supreme allegiance to the will of God will not permit him to make such an absolute promise, cannot take the oath and hence is disqualified for admission to citizenship."

[fol. 40] The dissenting Justices then compared the wording of the oath of allegiance with the wording of the oath prescribed by Congress under Art. VI, 3 of the Constitution for civil officers generally (except the President), found the terms of the oaths substantially similar, said that it went without saying that it was not the intent of Congress in framing the latter oath to impose any religious test; and found "it impossible to conclude," in view of the

history of the struggle for religious liberty, that Congress intended that persons with religious scruples against bearing arms should be disqualified from holding public office. Next the Justices noted that "There are other and most important methods of defense, even in time of war, apart from the personal bearing of arms," and that "a promise to engage in war by bearing arms, or thus to engage in a war believed to be unjust, would be contrary to the tenets of religious groups among our citizens who are of patriotic purpose and exemplary conduct." The dissenting opinion then continues as follows:

"To conclude that the general oath of office is to be interpreted as disregarding the religious scruples of these citizens and as disqualifying them for office because they could not take the oath with such an interpretation would, I believe, be generally regarded as contrary not only to the specific intent of the Congress but as repugnant to the fundamental principle of representative government.

"But the naturalization oath is in substantially the same terms as the oath of office to which I have referred. I find no ground for saying that these words are to be interpreted differently in the two cases. On the contrary, when the Congress reproduced the historic words of the oath of office in the naturalization oath, I should suppose that, according to familiar rules of interpretation, they should be deemed to carry the same significance."

Following this the dissenting Justices noted that the policy of granting exemptions from military service to conscientious objectors had been consistently followed since [fol. 41] colonial times,[1] and said that "the long-established practice of excusing from military service those whose religious convictions oppose it confirms the view that the Congress in the terms of the oath did not intend to require a promise to give such service." Next the dissenters admitted "that duty to the State exists within the domain of power, for government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the State, the latter is supreme within

[1] For a citation of authorities supporting this proposition see the opinion of the Circuit Court of Appeals in the *Macintosh* case, 42 F. (2d) 845, 847, 848.

its sphere and submission of punishment follows." "But," they said, "in the forum of conscience, duty to a moral power higher than the State has always been maintained," and "There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power." They found no ground for excluding Macintosh from admission to citizenship because his conscientious scruples had reference only to wars which he himself believed to be unjust, and they concluded by expressing the view that the *Schwimmer* case stood upon its own special facts and that the judgment therein did not require reversal in the case they were considering.

No discussion of importance is contained in the dissenting opinion filed in the third case of the trilogy, *United States* v. *Bland*, 283 U. S. 636, decided contemporaneously with the *Macintosh* case.[2] In it the Supreme Court divided in the same way that it did in the *Macintosh* case and for the reasons therein expressed.

[fol. 42] If I were to decide the question of law before us here *de novo* I would be disposed to follow the reasoning of the dissenting opinions in the *Schwimmer*, *Macintosh* and *Bland* cases and the decisions of the circuit courts of appeals reversed therein.[2] In the absence of an express statutory provision I find it hard to believe that Congress intended to deny citizenship by naturalization to members of sects such as the Quakers (and I think the same may be said of Seventh Day Adventists) who, as Mr. Justice Holmes observed in his dissent in the *Schwimmer* case, "have done their share to make the country what it is." It seems to me that interpreting the oath of allegiance in its historical setting, in connection with other statutes, and in conformity with the First Amendment, Congress did not intend in it to exact an unconditional promise actually to bear arms in war, but instead intended to exact a promise to support and defend the Constitution and laws of the United States in whatever [illegible] by such means as are

[2] 27 F. (2d) 742; 42 F. (2d) 845; 52 F. (2d) 812.

appropriate to an applicant's sex, age, and capabilities, and are not in violation of an applicant's religious scruples or beliefs in so far as those scruples or beliefs are either protected by the Constitution or have been consistently respected by Congress. However, the three celebrated cases above have not been overruled, and since in principle they rule the case at bar, I would probably feel compelled to follow them were it not for my view that now the Supreme Court itself would not do so.

I concede that the indications of reversal are not as strong here as they were in the second flag salute case, *Barnette* v. *West Virginia State Board of Education*, 47 F. Supp. 251. But as already appears decisions of circuit courts of appeals were reversed by a divided Supreme Court in the *Schwimmer*, *Macintosh* and *Bland* cases, and in the two latter, the ones most nearly in point, by the narrowest [fol. 43] margin, and the decisions reversed were fully, and I think convincingly reasoned and were unanimous. Thus there is a substantial body of judicial opinion opposed to that of the majority in the above cases. In view of this substantial body of opinion, in view of what I believe to be the intrinsic merit of that opinion, and in view of the many recent decisions of the Supreme Court giving broad definition to the scope of the guarantee of the free exercise of religion contained in the First Amendment,[3] I believe that the prediction can be ventured that the above cases are no longer expressive of the law. And I believe that this prediction can be ventured even resisting the temptation "to embrace the exhilarating opportunity of anticipating a doctrine which may be in the womb of time, but whose birth is distant." Learned Hand dissenting, *Spector Motor Service* v. *Walsh*, 139 F. (2d) 809, 823. Therefore I feel that we are not constrained to follow the Supreme Court cases cited last above.

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[3] *Cantwell* v. *Connecticut*, 310 U. S. 296; *Jones* v. *Opelika*, 316 U. S. 584; reversed on rehearing, 319 U. S. 103; *Jamison* v. *Texas*, 318 U. S. 413; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *Struthers*, 319 U. S. 141; *Taylor* v. *Mississippi*, 319 U. S. 583; *Board of Education* v. *Barnette*, 319 U. S. 624; *Follett* v. *McCormick*, 321 U. S. 573.

On the same day, to wit, June 1, 1945, the following judgment was entered:

JUDGMENT—June 1, 1945

This cause came on to be heard April 3, 1945, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

[fol. 44] PROCEEDINGS IN CIRCUIT COURT OF APPEALS

Upon consideration whereof, It is now, to wit, June 1, 1945, here ordered, adjudged and decreed as follows: The order of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with the opinion passed down this day.

By the Court, (S.) Arthur J. Charron, Clerk.

Thereafter, to wit, on June 18, 1945, mandate was stayed until further order of court.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 45] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. ——

JAMES LOUIS GIROUARD, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above entitled cause be, and the same is hereby, extended to and including October 30th, 1945.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 27th day of August, 1945.

[fol. 46] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 10, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on Cover: File No. 56275. U. S. Circuit Court of Appeals, First Circuit. Term No. 572. James Louis Girouard, Petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed October 30, 1945. Term No. 572 O. T. 1945.